

## INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made and entered into this 11th day of December, 2000, by and between THE TOWN OF WINDSOR, a statutory town and political subdivision of the State of Colorado, hereinafter referred to as "Windsor," and THE TOWN OF SEVERANCE, a statutory town and political subdivision of the State of Colorado, hereinafter referred to as "Severance." The parties hereto, when referring to both, may also be referred to hereinafter as "municipalities" or "parties." Either party hereto may also be referred to as "municipality" or "party."

### WITNESSETH:

WHEREAS, the Windsor Town Board and the Severance Town Board have recently participated in extensive discussions concerning the potential benefits to each of the municipalities resulting from a cooperative agreement regarding land use and development along certain portions of Highway 392 in Weld County, Colorado; and

WHEREAS, the Town of Severance now has under consideration the annexation of a parcel of property adjacent to Highway 392; and

WHEREAS, Highway 392 forms a natural boundary between Windsor and Severance and their present and future growth areas; and

WHEREAS, growth and development pressures and demands for municipal services exist and will continue to exist in both municipalities; and

WHEREAS, the urban growth boundaries (UGB) of the municipalities conflict in part, creating difficulties for both municipalities, the result of which could lead to incompatible and inconsistent growth and development in both municipalities; and

WHEREAS, Windsor and Severance are both committed to planned and orderly growth; to regulating the location and activities of development which may result in increased demands for services; to providing for the orderly development and extension of urban services, facilities, and regulations; to avoiding unnecessary duplication of governmental services; to simplifying governmental structure when possible; to promoting economic viability of both municipalities; and to raising revenue sufficient to meet the needs of the citizens of both municipalities; and

WHEREAS, because of the proximity of the municipalities, the nature and quality of development within each of the municipalities, and along the affected portions of Highway 392 will affect the nature and quality of development in the other municipality and the revenues of each; and

WHEREAS, increased coordination and cooperation between the two municipalities, including planning for and managing growth and development of land, the resolution of conflict



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regarding urban growth boundaries, the coordination of annexation policies and procedure, and coordination of the extension of services to areas of joint concern, will enhance the ability of the two municipalities to achieve their respective and common goals; and

WHEREAS, applicable provisions of the Colorado Constitution authorize municipalities to enter into agreements with one another concerning matters such as those set forth in this Agreement; and

WHEREAS, the statutes of the State of Colorado, specifically the Local Government Land Use Enabling Act, *Colorado Revised Statutes, 29-20-101 et seq.*, further authorizes statutory towns to enter into mutually binding and enforceable agreements regarding the joint exercise of planning, zoning and related powers; and

WHEREAS, this Agreement is entered into by Windsor and Severance pursuant to the aforesaid constitutional and statutory authority as well as other powers inherently granted to statutory municipalities by the State of Colorado;

NOW, THEREFORE, in consideration of the covenants and obligations expressed herein, it is hereby agreed by and between Windsor and Severance as follows:

1. **Preamble.** Both municipalities hereby acknowledge that the recitals set forth above are true and correct, and those recitals are incorporated into the body of this Intergovernmental Agreement.

2. **Definitions.**

(a) **Geographic Area.** *Geographic Area* shall refer to all lands depicted on "Exhibit A," which is attached hereto and incorporated herein by this reference.

(b) **Cooperative Planning Area.** *Cooperative Planning Area* (CPA) is a portion of Exhibit A and is specifically depicted thereon. The Cooperative Planning Area is a corridor defined as one-quarter ( $\frac{1}{4}$ ) mile north and south of Colorado State Highway 392, bound on the west by Colorado State Highway 257/Weld County Road 19, and on the east by Weld County Road 23.

(c) **392 Corridor.** For purposes of this Agreement, references to *392 Corridor* shall be construed as references to the Cooperative Planning Area.

(d) **Commercial Corridor Area.** *Commercial Corridor Area* is a portion of the Cooperative Planning Area and is specifically depicted within the Cooperative Planning Area on Exhibit A. The Commercial Corridor Area is a corridor defined as one-eighth ( $\frac{1}{8}$ ) mile north and south of Colorado State Highway 392, bound on the west by Colorado State Highway 257/Weld County Road 19, and on the east by Weld County Road 23.



3. **Comprehensive Development Plan for the Cooperative Planning Area.**

(a) Within twelve (12) months of their adoption of this Agreement, Windsor and Severance agree that they shall develop and implement a mutually acceptable comprehensive development plan, to be known as the Corridor Development Plan, for the development of land and for the provision of urban services and facilities within the CPA. It is anticipated that in the preparation of the Corridor Development Plan, the parties will consult with all other affected entities, including but not limited to, Weld County and all property owners within and adjacent to the CPA. It is understood and agreed that it may be necessary for the parties to elicit the assistance of outside consultants or other experts skilled in the preparation of such plans. The hiring of such consultants or other experts shall be subject to the approval of the board of trustees of each of the municipalities. In the event consultants or other experts are hired, all such outside costs will be borne by each of the parties on a per-capita basis.

It is further understood and agreed that the Corridor Development Plan, as prepared and adopted by Windsor and Severance, may address a wide variety of issues relating to cooperation between the municipalities; and, as such, the Corridor Development Plan may be adopted by the parties in stages. At a minimum, it is agreed that the Corridor Development Plan shall include provisions addressing the following:

(1) Resolution of conflicts between the municipalities and the establishment of consistent UGBs.

(2) Land use restrictions in the CPA, specifically including the prohibition of residential zoning within the CPA, unless such residential zoning is specifically agreed upon by both municipalities.

(3) The location, design, construction, maintenance, and financing of streets and highways within the CPA.

(4) The issuance, approval, and review of building permits within the CPA.

(5) Provisions for government services within the CPA, including but not limited to, utility services, law enforcement, fire and emergency services, and code enforcement.

(6) A drainage master plan for the CPA including the planning, design, construction, maintenance and financing of drainage improvements and facilities.

(7) Provisions for the development and maintenance of parks, recreation services, and open space within the CPA.

(8) Provisions for setbacks, design standards, landscaping, and



maintenance of rights-of-way within the CPA.

(b) Upon the adoption of the Corridor Development Plan, in whole or in part, no development proposals, which for purposes of this Agreement shall include conditional use grants, shall be approved by either of the parties which are inconsistent with the plan adopted by the municipalities without the specific written consent of the board of trustees of each of the municipalities. It is understood and agreed that upon the adoption of this Intergovernmental Agreement, all plans and specifications for any development proposal within the boundaries of the CPA, received by either of the parties after the effective date of this Agreement, shall be forwarded to the other party for review and comment at least thirty (30) days prior to any action being taken on said development proposal. The review and comment period provided for herein may be shortened or extended by the parties by mutual agreement.

4. **Amendment of the Cooperative Planning Area Boundaries.** The parties recognize that the boundaries of the CPA as established by this Agreement are reflective of current and projected land uses within the Geographic Area. The parties intend that the area to be contained within the CPA be limited to commercial and industrial development and that such development not be divided by the artificial boundaries established by this Agreement. The parties recognize that as annexations occur, and developments are proposed within the Geographic Area, it may be necessary to amend this Agreement to modify the boundaries of the CPA to include additional land that may be developed as commercial or industrial or to exclude land which will not be so developed. The parties agree that they shall fully cooperate with one another in adopting such amendments to this Agreement as may be necessary to effectuate the intentions of the parties as expressed in this paragraph.

5. **Urban Growth Boundaries and Annexation.**

(a) The parties agree that upon the adoption of this Agreement, they shall forthwith make such adjustments to their respective comprehensive plans or other official documents to reflect the UGBs as set forth in the Geographic Area.

(b) Windsor shall have exclusive authority to exercise its annexation powers and to provide services within its UGBs as described on Exhibit A.

(c) Severance shall have exclusive authority to exercise its annexation powers and to provide services within its UGBs as described on Exhibit A, except as modified by the provisions for water and sewer services set forth in paragraph 6 of this Agreement.

(d) Both parties specifically agree that upon the receipt or preparation by either of them of any documents proposing annexation within the CPA, copies of all such documents shall

be submitted to the other party for review and comment at least thirty (30) days prior to any intended action thereon.

(e) In the event either Windsor or Severance elects not to exercise annexation powers or to extend services pursuant to this paragraph, the declining municipality shall notify the other party within thirty (30) days of that decision. Upon receipt of such notice, the other party may thereafter, in its sole discretion, exercise its annexation powers and/or extend services to such property.

(f) With the exception of the specific recitals contained herein, nothing in this Agreement shall otherwise be construed as limiting or otherwise restricting the annexation powers of the respective municipalities within each municipality's UGB as defined by this Agreement and reflected on Exhibit A.

6. **Adoption of the East Main Street Corridor Plan.** Windsor has adopted certain planning and design guidelines for portions of the 392 Corridor presently annexed to Windsor. These guidelines are collectively known as the East Main Street Corridor Plan. Those portions of the East Main Street Corridor Plan relevant to this Agreement are attached hereto and incorporated herein as "Exhibit B." The parties agree that it is in the best interest of both municipalities to extend the relevant portions of the East Main Street Corridor Plan to the Commercial Corridor Area as set forth in Exhibit B. Accordingly, the parties agree that the East Main Street Corridor Plan as set forth in Exhibit B shall be applicable to the Commercial Corridor Area of the CPA. Upon the adoption of this Agreement, development proposals not in compliance with these planning and design guidelines shall not be approved by either of the parties.

7. **Water and Sewer Service in the CPA.**

(a) It is specifically understood and agreed that no development proposing the use of septic systems in the CPA shall be approved by either municipality. Because of the location of their facilities and the topographical difficulties presented, the parties recognize that the CPA will most efficiently be served by the water and sewer services of Windsor. Accordingly, the parties agree that water and sewer service in the area identified as the CPA on Exhibit A shall be made available by Windsor, regardless of whether or not portions of that area are annexed to Windsor or to Severance. Such service shall be made available in accordance with the development standards and policies of Windsor. For those portions of the CPA annexed to Windsor, all customers therein will be charged in accordance with the water and sewer fees and charges in effect for other customers within the corporate limits of Windsor. The parties agree that for those portions of the CPA subsequently annexed to Severance, Windsor's fees and charges shall be determined after appropriate consultations with Severance, and unless the parties otherwise agree, Windsor's water and sewer fees and charges shall not exceed such fees and charges imposed upon regular customers located within Windsor's corporate limits. Nothing herein shall be construed as preventing the parties from entering into additional agreements which modify the provisions of this paragraph with regard to water and



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sewer service fees and charges. As is reflected elsewhere in this Agreement, both municipalities agree that in the absence of mutual written consent, no water and sewer service will be provided to any residentially zoned property within the CPA. This Agreement shall not affect current residential development which may exist in the CPA at the time of annexation by either of the municipalities. Windsor agrees that it shall make water and sewer service available to such existing residential development, in accordance with the development standards and policies of Windsor.

(b) Windsor has in design a plan which will expand Windsor's Eastside Sewer Interceptor to the north, thereby enabling Windsor to serve certain areas of the CPA before the end of calendar year 2001. Windsor acknowledges that it has sufficient funds to complete this expansion in 2001 and has specifically appropriated funds therefor.

8. **Regional Sewer Treatment Facility.** As is reflected elsewhere in this Agreement, Windsor and Severance recognize their mutual obligation to the citizens of the Geographic Area to cooperate with one another in providing efficient and cost effective utility services. Windsor currently operates a sewer treatment facility with capacity for expansion. Current and projected growth in Severance will require additional sewer service. Sound planning dictates that Severance join with Windsor in the expansion of Windsor's treatment facility to include discharge from Severance. The parties agree to commence negotiations forthwith to expand the capacity of Windsor's sewer treatment facility to transform the facility to a regional facility which will serve the present and future needs of the Severance.

9. **Utility Easements and Rights-of-Way.** Within their respective jurisdictions in the CPA, each party shall provide the other, utility easements and rights-of-way, without charge if previously granted to the providing party without charge, which are required to make water and sewer service available within their respective jurisdictions, and rights-of-way for necessary storm drainage improvements.

10. **Shared Revenues.**

(a) It is understood and agreed by the parties hereto that the implementation of this Agreement, and the achievement of its purposes, including planning for and regulating the use of land and the provision of urban services, facilities, rights-of-way, and other requirements, will require significant time and effort on the part of both parties, as well as the expenditure of substantial revenues. Accordingly, the parties agree that it is in the best interest of each that certain tax revenues generated within the CPA be shared between them. It is understood and agreed that all sales, use and property tax revenues collected by each of the municipalities within the CPA shall be shared and distributed between the municipalities, two thirds (2/3) to the collecting municipality and one third (1/3) to the other municipality.

(b) At the time of the execution of this Agreement, the sales and use tax rates in Windsor are fixed at 3%, while those in Severance are fixed at 2%. The parties recognize that the equalization of these rates is important to the continued viability of this Agreement. It is the present intention of the Board of Trustees of Severance to place a proposal to increase sales and use tax rates by 1% before the electors of the Town at the next lawful election following the execution of this Agreement. The Board of Trustees agrees to use its best efforts to encourage the passage of this proposal by the citizens of Severance.

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(c) At the time of the execution of this Agreement, neither of the municipalities has in effect an accommodations or lodging tax or a hotel/motel occupancy tax. In the event either of the municipalities adopts any such tax, all revenues generated thereby shall be retained by the taxing municipality. In the event both municipalities subsequently adopt any such tax in an equal amount, the revenues therefrom shall be shared by the parties in proportions provided for herein for sales, use and property taxes.

(d) All tax revenues subject to sharing pursuant to this Agreement shall be distributed between the two municipalities no later than thirty (30) calendar days following the end of the calendar quarter during which the revenue was collected or received.

(e) Each of the municipalities shall make every effort to standardize with the other municipality the procedures, ordinances and regulations applicable to the taxes to be shared pursuant to this Agreement.

(f) Each party and its authorized agents may, upon thirty (30) days' advance written notice to the other, audit the other's records of those taxes which are collected within the CPA and which are being shared pursuant to this Agreement.

(g) Neither of the municipalities shall impair the rights under this paragraph of the other municipality, without the other's consent, to share in the revenues as described in this paragraph.

(h) Notwithstanding anything herein to the contrary, the obligations of the parties hereunder shall be subject to and subordinate the parties' obligations, covenants, and representations contained in or incorporated in any ordinance, resolution, indenture, underwriting agreement, or other document pertaining to the authorization, issuance, payment, or sale of any bonds, notes, certificates, indentures, or other evidences of borrowing (except as may be specifically provided otherwise in any such document), whether now or heretofore in existence, executed, issued, or incurred, the intent being that such obligations, covenants, and representations have and will take precedence over those set forth herein, and will be met, complied with, satisfied, and discharged in accordance with such documents prior to any distribution of moneys hereunder.



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Neither party shall pledge or subordinate the revenues contemplated by this Agreement to any other person or entity, nor shall any party incur any obligation, debt, underwriting or adopt any resolution or ordinance subsequent to this Agreement which would impair such party's obligations created by this Agreement.

(i) In the event of a significant change in the Colorado tax structure, this Agreement shall be modified so as to accomplish its intended purpose of continuing the revenue sharing provisions of this Agreement in a manner that resembles those provisions as closely as possible.

(j) It is understood and agreed that for purposes of the application of the revenue limitations contained in Article X, Section 20, of the Colorado Constitution, commonly known as TABOR, all revenues collected and thereafter distributed to the other municipality, shall be deemed revenues collected solely for the purpose of passing those revenues through to the receiving municipality, and the receiving municipality shall be obligated to count and include such revenues for TABOR purposes.

11. **Parties to Exercise Good Faith.** Windsor and Severance agree to devote their best efforts and to exercise good faith in implementing and adhering to the provisions of this Agreement throughout its term.

12. **Intent of Agreement.** This Agreement is intended to describe rights and responsibilities only as between the named parties hereto. It is not intended to and shall not be deemed to confer rights to any persons or entities not named as parties hereto nor to require Windsor or Severance to annex any property or to provide any services to any land. This Agreement is not intended to limit in any way the powers or responsibilities of Weld County or of any other political subdivision of the State of Colorado not a party hereto.

13. **Rights upon Default and Mediation provisions.** The Local Government Land Use Enabling Act, earlier referred to in this Agreement, provides that agreements between municipalities for the purposes set forth herein, are mutually binding and enforceable. Both parties hereby acknowledge the binding and enforceable nature of this Agreement. Should either party fail to comply with the provisions of this Agreement, the other party, after providing written notification to the non-complying party, and upon the failure of the non-complying party to achieve compliance within ninety (90) days after said notice, may at its option, either terminate this Agreement or maintain an action in a court of competent jurisdiction for specific performance, injunctive, or other appropriate relief. In the event of such litigation, each party shall be responsible for its own costs, including attorney fees. It shall be the obligation of the parties to submit to mediation any issue of non-compliance prior to declaring this Agreement terminated or prior to commencing an action in court as aforesaid. The parties shall agree on the appointment of a mediator who shall be experienced in matters of local government and the legal obligations of local government entities. In the event the parties are unable to agree upon a mediator, each party shall appoint an independent third party,





and the third parties so appointed shall select a single mediator. The procedures and methodology for mediation shall be determined by the mediator. Appointment of the mediator shall take place no later than thirty (30) days following written notification as provided in this paragraph, and mediation shall be completed no later than sixty (60) days thereafter.

By the provisions of this paragraph it is the express intention of the parties to establish fully enforceable consequences upon the breach of this Agreement, while not in any way limiting the ability of the parties to freely exercise legislative discretion.

14. **Effective Date.** This Agreement shall be presented to the board of trustees of the respective municipalities for adoption by resolution, following notice and public hearing. This Agreement shall become effective upon its adoption by both municipalities.

15. **Term.** The Parties intend this Agreement to remain in full force and effect in perpetuity. To the extent allowable by law, both parties further intend to be bound by the provisions hereof in perpetuity.

16. **Annual Appropriation of Funds.** While it is the clear intention of the parties that this Agreement continue in perpetuity, it is understood and agreed that with regard to the financial obligations imposed upon Windsor and Severance by the terms of this Agreement, it is specifically understood and agreed that those obligations are specifically subject to the annual appropriation of monies by the respective municipalities to fund those obligations. It is the intent of the parties to plan to appropriate monies to fulfill each party's obligations under this Agreement in perpetuity.

17. **Amendment.** All amendments to this Agreement must be made in writing and approved by the governing bodies of both municipalities by resolution.

18. **Notices.** Requirements of notice hereunder shall be deemed satisfied upon mailing to the parties as follows:

Town Administrator  
Town of Windsor  
301 Walnut Street  
Windsor, CO 80550

copy to:

John P. Frey, Esq.  
P. O. Box 2283  
Fort Collins, CO 80522-2283

Town Clerk  
Town of Severance  
336 1<sup>st</sup> Street  
P.O. Box 122  
Severance, CO 80546

copy to:

Don Hoff, Esq.  
1025 9<sup>th</sup> Avenue, #309  
Greeley, CO 80631



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19. **Effect of Invalidity.** If any portion of any paragraph of this Agreement is held invalid or unenforceable by a court of competent jurisdiction as to either party or as to both parties, such invalidity or unenforceability shall not affect the other paragraph(s) of this Agreement except that if a requirement or limitation in such paragraph(s) is declared invalid as to one party, any corresponding requirements or limitation shall be deemed invalid as to the other party.

IN WITNESS WHEREOF, the above parties hereto have caused this Agreement to be executed the day and year first above written.

TOWN OF WINDSOR

By: W. Wayne Miller  
W. Wayne Miller, Mayor



ATTEST:

Cathy M. Kennedy  
Town Clerk

APPROVED AS TO FORM:

[Signature]  
Town Attorney

APPROVED FOR CONTENT:

[Signature]  
Town Administrator

TOWN OF SEVERANCE

By: Cherice Blehm  
Cherice Blehm, Mayor

ATTEST:

[Signature]  
Town Clerk

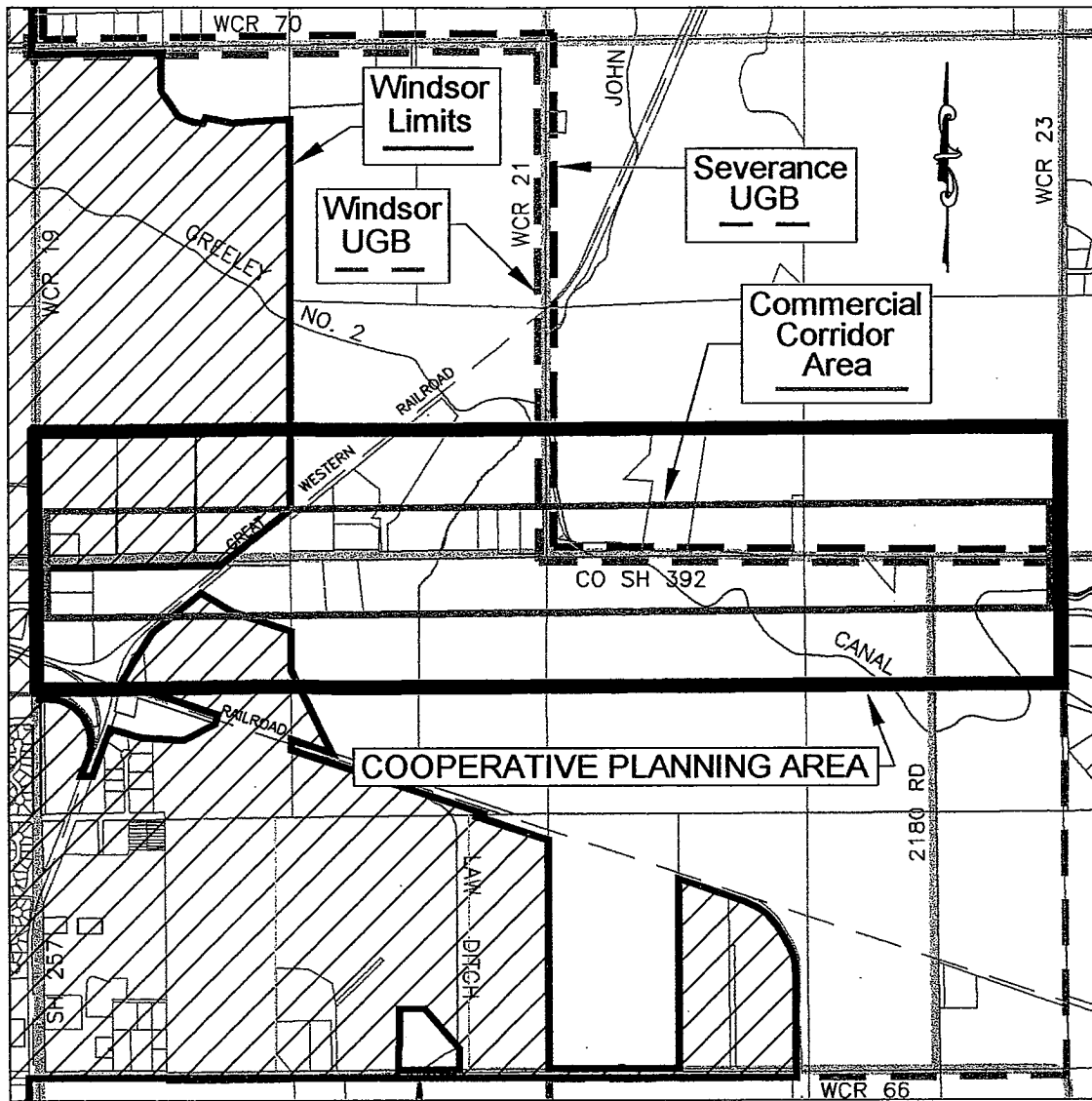
APPROVED AS TO FORM:

[Signature]  
Town Attorney



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# EXHIBIT "A"



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